

No. 9(1)82-8 Lab/2739.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Manoj Kumar Sham Babu, (ii) Aggarwal Wood Works, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,  
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 167 of 1981

between

SHRI VIRENDRA SINGH, WORKMAN AND THE RESPONDENT MANAGEMENT OF (i) M/S MANOJ KUMAR SHAM BABU, (ii) M/S AGGARWAL WOOD WORKS, MATHURA ROAD, FARIDABAD

Present. —

Shri K.L. Sharma, for the workman.

Shri Pardeep Kumar, for the respondent No. 2.

#### AWARD

This reference No. 167 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana, — vide his order, No. ID/FD/70/81/24428, dated 15th May, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Virendra Singh, workman and the respondent management of M/s (i) Manoj Kumar Sham Babu, (ii) M/s Aggarwal Wood Works, Mathura Road, Faridabad. The terms of the reference was :—

“Whether the termination of services of Shri Virendra Singh was justified and in order? If not, to what relief is he entitled?”

On receiving this order of reference, the notices were issued to the parties. The parties appeared and filed their pleadings. The case of the workman according to his demand notice is that he joined the service of the respondent on 4th June, 1980 at a salary of Rs 220 per mensem and met with an accident on 6th August, 1980 and as result of this the left thumb of the claimant was cut. The workman demanded compensation for the injury as per law. But the respondent offended and terminated the services without assigning any reason on 7th February, 1981. So the workman is entitled for the reinstatement with full back wages and continuance of service.

This reference is against two respondents, (i) M/s. Manoj Kumar Sham Babu, (ii) M/s. Aggarwal Wood Works, Mathura Road, Faridabad. The notices were sent to both the respondents, but on 13th July, 1981 respondent No. 2 came present in the Court and respondent No. 1 was not present and it was ordered that the respondent No. 1 be issued notice. But on the next date of hearing dated 30th July, 1981 none was present on behalf of the respondent management, so *ex parte* order were made against the respondent No. II and about the first respondent, the representative of the workman stated that the respondent No. 2 is the principal employer and the first respondent was the contractor under the principal employer, who has left the principal employer and there is no address available of the first respondent and there is no need of first employer when the principal employer has attended the Court. According to the statement of the workman's representative, the case was fixed for the *ex parte* evidence of the workman. On 11th August, 1981, when the case was fixed for *ex parte* evidence of the workman, the representative of the respondent No. II come present in the Court and filed the application for setting aside the *ex parte* orders, which was set aside

and the respondent gave the written statement. According to the written statement, the case of the respondent is that there was no relationship of employer and employee between the respondent No. 2 and the claimant. The claimant never worked with the respondent No. 2 and the claim is false and fictitious. There is a further objection in the written statement that the reference is bad in law for non joinder of the parties. The respondent No. 2 has wrongly impleaded in the present case and he has no connection with M/s Manoj Kumar Sham Babu. He has further stated that he had no knowledge of the accident occurred with the respondent as he was never employed with him.

On the pleadings of the parties, the following issues were framed :—

- (1) Whether there is any relationships of employer and employee between the parties ?
- (2) Whether the termination of service of the workman is proper, justified and in order ? If not, to what relief is he entitled ?

My findings on issues are as under :—

*Issue No. 1.*—The representative of the respondent argued that the firm M/s Aggarwal Wood Works was registered under the Central Sales Tax Registration which is Ex. M-1. The certificate is dated 8th July, 1975. The owner's name is written as Shrimati Tirwani Devi in this registration which was issued by the Central Sales Tax Registration Authorities, Faridabad. The name of the firm mentioned in this certificate is M/s. Aggarwal Wood Works, Faridabad, clearly shows that it is a firm owned by Shrimati Triwani Devi of respondent wife of Shri Sham Sunder of the respondent No. 2, who has come in the witness as MW-2 and stated that this firm was registered as Ex. M-1. He has further stated in his statement that he has brought the attendance register for the concerned period in which there is no such name of the claimant. There used to be two employees with the respondent during this period which have been shown in the register. He further stated in his statement that he received a demand notice from the Conciliation Officer regarding this claimant and stated the same before the Conciliation Officer that they have no relationship of employer or employee. He further argued that on the suggestion of the workman's representative the witness has stated in his cross-examination that Shri Manoj Kumar was also there in the Conciliation Office on the same day, when he appeared before the Conciliation Officer and there was a settlement between the workman and Shri Manoj Kumar, but he has further stated that he did not know any Manoj Kumar. The witness further stated in his statement that he made an application to the Labour Commissioner, Government of Haryana, which is Ex. M-3 regarding the same fact. The postal receipt is Ex. M-4 and acknowledgement is Ex. M-5 for this letter. But the respondent received no reply from the Labour Commissioner regarding this letter. The respondent head in his cross-examination that the respondent factory is registered under the Factories Act in 1981 and the respondent maintained the registers according to the Factories Act. He further argued that the workman produced no evidence to show the relationship between the parties. The workman may be the employee of the first respondent Shri Manoj Kumar Sham Babu, who has left by the workman intentionally by saying that he was a contractor with M/s. Aggarwal Wood Works. There is no proof on the file that M/s. Manoj Kumar Sham Babu was the contractor of M/s. Aggarwal Wood Works. The name of the firm shows that it can not be contractor of M/s Aggarwal Wood Works, because M/s. Aggarwal Wood Works was not a big employer which employed the contractor for their work. So the workman was employee of the respondent No. 2.

The representative of the workman argued on this issue that the workman was employed by the respondent No. 2 and worked with him for two months from 4th June, 1980 to 6th August, 1980 then he met with an accident in which his left thumb was lost. The respondent took him to the hospital and got treated him and gave the expenses as stated by the

workman as WW-1 and when he was able to work and came in the factory for the work and demanded the compensation for accident, he was removed from the service on 7th February, 1981. The workman remained in the hospital Sufdarjang for some time and also appeared before the Medical Board,—vide Ex. W-1. He further argued that the workman has produced any other witness Shri Suresh Chand as WW-2, who has stated that the claimant was working with M/s. Aggarwal Wood Works and he met with an accident and went to the hospital with Mr. Aggarwal, clearly shows that the respondent was the employer of the workman.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that the respondent has proved this fact that there is no relationship of employer and employee between the claimant and the respondent No. 2. The respondent has produced Ex. M-1 a certificate from July, 1975; clearly shows that it is an old establishment in the name of M/s. Aggarwal Wood Works. The name of the owner given in the certificate is Smt. Triwani Devi. There is no such name as given in the reference. The reference is on the two firm M/s. Manoj Kumar Sham Babu and M/s. Aggarwal Wood Works. The workman could not give the address of the first respondent saying that he was a contractor with the respondent No. 2, which is not proved in the file that the first respondent M/s. Manoj Kumar Sham Babu was the Contractor with M/s. Aggarwal Wood Works as stated by the workman as WW-2 that he never seen any such man by the name of Manoj Kumar and even the workman has stated in his statement as WW-1 that he does not know or seen any Manoj Kumar. but the workman representative has suggested the respondent No. 2 witness Shri Sham Sunder as MW-1 that he was in the Conciliation Office, on the date of hearing and Shri Manoj Kumar was also there for the some demand notice. When there was any Manoj Kumar before the Conciliation Officer, then it was the duty of the workman's representative or the workman to find out his proper address and inform about this case, but the workman left the first party and did not give address of the respondent No. 1, stating that he was a contractor with M/s. Aggarwal Wood Works, and he has left Faridabad and his whereabouts are not know. This Court has no jurisdiction to go beyond the reference order. When one respondent did not appear in the Court and the workman give no evidence to prove that he had relationship with the II respondent. Whereas the respondent No. 2 has proved on the file that he had got no relationship with the workman. So the issue is decided in favour of the respondent management No. 2 and against the workman.

*Issue No. 2.*—After deciding issue No. 1 in favour of the respondent there is no need to discuss this Issue No. 2. Issue No. 2 is whether the termination of service was proper and justified. When the claimant failed to show their relationship by any documents or oral evidence, the question of termination does not arise. So this issue is also decided in favour of the respondent No. 2 and against the workman and the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 1st March, 1982.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.

Endstt. No. 623, dated the 11th March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,  
Presiding Officer,  
Labour Court, Haryana,  
Faridabad.